

**FILED**

**JUL 28 2011**

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FARZAD DARUI,  
3433 Malbrook Drive  
Falls Church, VA 22044,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530,

Defendant.

Case: 1:11-cv-01371  
Assigned To : Huvelle, Ellen S.  
Assign. Date : 7/28/2011  
Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, and the Privacy Act, 5 U.S.C. § 552a, challenging the failure of the United States Department of Justice and its component agencies the Federal Bureau of Investigation and the Executive Office for United States Attorneys to fulfill the request of Farzad Darui on records concerning himself.

2. This case seeks declaratory relief that defendant is in violation of the FOIA for failing to fulfill plaintiff's requests for records and injunctive relief that defendant immediately and fully comply with plaintiff's requests under the FOIA.

**JURISDICTION AND VENUE**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 702, which gives the Court jurisdiction over agency actions where an aggrieved party has

suffered wrong within the meaning of a “relevant statute,” here the FOIA. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 703, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Plaintiff Farzad Darui is a resident of the state of Virginia. Plaintiff is the requester of the records being improperly withheld by defendant.

5. Defendant Department of Justice is an agency within the meaning of 5 U.S.C. § 552(f). The Federal Bureau of Investigation (“FBI”) and the Executive Office for United States Attorneys (“EOUSA”) are components of Defendant Department of Justice. Defendant is the federal agency with possession and control of the requested records and is responsible for fulfilling Farzad Darui’s FOIA requests.

### **STATUTORY FRAMEWORK**

#### **The Freedom of Information Act**

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency’s determination whether or not to fulfill the request and of the requester’s right to appeal the agency’s determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency’s determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii).

9. In “unusual circumstances,” an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide “the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B).

10. This Court has jurisdiction, upon receipt of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

11. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the court makes a written finding that “the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously,” a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

## **FACTS GIVING RISE TO PLAINTIFF’S CLAIMS FOR RELIEF**

### **Background**

12. Plaintiff was arraigned on June 20, 2007 by the United States Attorneys Office for the District of Columbia on fraud charges based on his position as the business manager of the Islamic Center in Washington D.C. A trial on the charges ended in a hung jury in May of 2008. On August 17, 2010, the government dropped all of the charges against Mr. Darui.

### **EOUSA Request**

13. By letter dated August 31, 2010, plaintiff Farzad Darui submitted a FOIA/Privacy Act to the EOUSA for all information concerning himself.

14. By letter dated September 13, 2010, the EOUSA acknowledged receipt of plaintiff's request. The EOUSA assigned the request case number 10-3216

15. By letter dated March 31, 2011, the EOUSA denied plaintiff's request. The EOUSA withheld the records in full pursuant to Privacy Act exemption (j)(2) and FOIA Exemptions 3, 5, 7(A), 7(C), 7(D) and 7(F). The EOUSA did not cite any statute for the invocation of the Exemption 3 statute; the handwritten statement of the EOUSA merely said "Court-Seal [Entire case]."

16. By letter dated April 6, 2011, plaintiff appealed the EOUSA denial to the Office of Information Policy ("OIP"). Specifically, plaintiff stated, among other things, that charges against him were dismissed by the United States Attorney's Office for the District of Columbia had been dismissed against him on August 17, 2010, and therefore the Exemption 7(A) invocation for all of the records was unfounded.

17. By letter dated April 18, 2011, OIP acknowledged plaintiff's appeal. OIP assigned the matter AP-2011-01683.

18. As of this date, neither OIP nor EOUSA has responded further to this matter.

#### **FBI Request**

19. By letter dated July 26, 2010, plaintiff Farzad Darui submitted a FOIA/Privacy Act request to the FBI for all records pertaining to himself. Specifically, plaintiff sought all records located at both FBI Headquarters and the Washington Metropolitan Field Office. Plaintiff requested all cross-references, electronic surveillance photos and bulky exhibits maintained by the FBI.

20. By letter dated August 13, 2010, the FBI acknowledged plaintiff's request. The FBI informed plaintiff that it assigned the request number 1152212-000.

21. By letter dated December 8, 2010, the FBI advised plaintiff that the FBI was “searching for, retrieving, scanning, and evaluating files that may be responsive to your request.”

22. By letter dated January 14, 2011, the FBI informed plaintiff that they located approximately 25,000 pages potentially responsive to plaintiff’s request. The FBI asked if plaintiff sought the releasable pages in paper or cd format. The FBI also asked plaintiff if he would be willing to narrow his request.

23. By letter dated January 20, 2011, plaintiff promised to pay fees up to \$740. Plaintiff informed the FBI that he did not wish to narrow his request but that he would like to receive the material on a rolling release schedule. Plaintiff inquired as to when he could expect his first release.

24. As of this date, the FBI has not made any release of information to plaintiff nor has it stated a date as to when the records will be released.

### **REQUESTS FOR RELIEF**

#### **PRAYER FOR RELIEF**

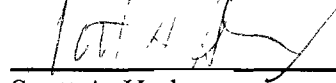
WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Declare that the U.S. Department of Justice has violated the Freedom of Information Act by failing to lawfully satisfy plaintiff’s FOIA requests;
- (2) Order defendant’s component agencies FBI and EOUSA to search immediately for all records responsive to plaintiff’s FOIA requests;
- (3) Order defendant’s component agencies FBI and EOUSA to release immediately all records responsive to plaintiff’s FOIA requests;

(4) Award plaintiff his reasonable attorney fees and litigation costs in this action,  
pursuant to 5 U.S.C. § 552(a)(4)(E); and

(5) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Attorney for Plaintiff

Dated: July 28, 2011